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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/993,243	11/06/2001	John T. McHale IV	16944-8455	1052
21888	7590	01/26/2005	EXAMINER	
THOMPSON COBURN, LLP ONE US BANK PLAZA SUITE 3500 ST LOUIS, MO 63101			CHILCOT, RICHARD E	
			ART UNIT	PAPER NUMBER
			3627	

DATE MAILED: 01/26/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/993,243

Applicant(s)

MCHALE ET AL.

Examiner

Richard E. Chilcot, Jr.

Art Unit

3627

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply, and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 29 October 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1,3,5,7-25,29,30,32-47 and 54-73 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,3,5,7-25,29,30,32-47 and 54-73 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

## DETAILED ACTION

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

Claims 1, 3, 5, 7-25, 29, 30, 32-47, and 54-73 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ragsdale-Elliott et al. (6,636,835) in view of Kurland et al and Yanagawa et al. (5,535,407).

Ragsdale-Elliott et al. teach a patron service system and method comprising at least one patron station (18) configured to electronically display a plurality of menu items (Fig. 5B) and at least one advertisement (106) and an establishment server (200) in communication with each patron station that is configured to receive and process order input for later fulfillment of the order. The patron station is configured to receive order input from the patron corresponding to an order from the menu. With respect to claims 57-60, it is common practice in the field to base advertisement selections upon a variety of rules, including order input, patron information, predetermined conditions, products ordered, and so on.

While Ragsdale-Elliott et al. teach all the features of the claimed invention, Ragsdale-Elliott et al. fails to disclose a central server in communication the establishment server. On the other hand, Yanagawa et al. teach in Figure 2, a well-known system having a central server (2) in communication with a plurality of establishment servers (4). Accordingly, it would have been obvious for one having ordinary skill in the art at the time of the invention to include a central server with the system of Ragsdale-Elliott et al., as suggested by Yanagawa et al. The motivation for such a change would have allowed a cost savings for a restaurant enterprise that has more than one location. Regarding the location of the database for the advertisements,

it would have been obvious for the skilled artisan to locate the advertisement on the central server.

With regard to claims 9-11 and 23, it is common practice in the field to base advertisement selections upon a variety of quantities, including order input, patron information, and so on. With regard to claims 13-15, it is common practice in the field to store supplements associated with a given advertisement (a link to a webpage or coupons, for example) and to keep records regarding patron selections.

With regard to claims 17-20 and 22, it is common practice in the field to create and store files for individual patrons that include ID information and historical behavioral information.

The patron service system of Ragsdale-Elliott et al. differs from the current invention in that it does not include a server in communication with a plurality of selectable music selections (claim 21). On the other hand, Kurland discloses a patron service system (10, Fig. 1, abstract) that includes a database (22, 32) for storing a plurality of entertainment selections (could be advertisements) and an establishment server that can select one of the selections for display (abstract). Kurland further teaches, the system includes a means for changing the content of the database and a processor and program for selecting a given selection to be displayed (col. 2 line 45+). Also, the stations are configured to receive demographic information from patrons and send it to the server (see Fig. 4). Moreover, the patron stations are configured to receive selection input and to communicate the input to the server (see Fig. 4). Kurland goes on

to teach, the patron stations are configured to receive patron identity input and to communicate the input to the server (see Fig. 4).

With regard to claim 21, the server is in communication with a plurality of selectable music selections (col. 5 line 50+). Accordingly, it would be obvious to one skilled in the art to modify the patron service system of Ragsdale-Elliott et al. to include a data base for storing a plurality of advertisements, wherein the establishment server can select one of the advertisements for display, a means for changing the content of the data base, a processor and program for selecting a given advertisement, and a server in communication with a plurality of selectable music selections, as taught by Kurland, to provide a means by which customer wait time can have been utilized to provide additional income to the establishment serving the customer.

### ***Response to Arguments***


Applicant's arguments with respect to claims 1, 3, 5, 7-25, 29, 30, 32-47, and 54-73 have been considered but are moot in view of the new ground(s) of rejection.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Richard E. Chilcot, Jr. whose telephone number is 703-305-4716. The examiner can normally be reached on 5/4/9 1st Friday off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robert Olszewski can be reached on (703) 308-5183. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Richard E. Chilcot, Jr.  
Primary Examiner  
Art Unit 3627